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PROPOSED LEGISLATION—"SENIOR EXECUTIVES SALARY ACT OF 1989"

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO INCREASE THE ANNUAL SALARIES OF EXECUTIVE PERSONNEL AND FOR OTHER PURPOSES

JULY 10, 1989.—Referred to the Committee on Post Office and Civil Service and ordered to be printed

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THE WHITE HOUSE,
Washington, July 7, 1989.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am submitting for your consideration and enactment the "Senior Executives Salary Act of 1989." This legislation would provide higher salaries to a small number of employees in positions requiring specialized and critical skills. It also provides for salary increases ranging from 8 percent to 25 percent for senior executive branch officials. In addition, the bill links receipt of the higher salaries to effective job performance.

The bill is the executive branch counterpart to the judicial salary proposal (the "Judicial Salary Act of 1989"), which I submitted to the Congress in April calling for a 25 percent increase in the pay of Justices and judges.

The pay of senior Government officials has eroded significantly in relation to the pay of executives in comparable jobs in the private and not-for-profit sectors of the economy. This pay gap is affecting the Federal Government's ability to attract and retain the skilled and motivated senior executives necessary to direct the complex, wide-ranging, and critical functions of the Federal Government.

Prompt legislative action is needed to address pay deficiencies for employees with exceptional qualifications and to make pay more competitive at the senior levels of Government. It is equally important that we resolve issues connected with congressional pay and honoraria. I am also submitting today a proposal to ban congressional honoraria, and I want to work with the Congress to address compensation in all three branches of Government.

Sincerely,

GEORGE BUSH.

A BILL To increase the annual salaries of executive personnel and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. This Act may be cited as the "Senior Executives Salary Act of 1989."

SEC. 2. (a) The annual salary rates of positions in the Executive Schedule are hereby increased in the amount of 25 percent of their respective existing rates, rounded to the nearest $100, effective the first day of the first pay period that begins on or after January 1, 1990.

(b) Any adjustment in rates of pay for fiscal year 1990 that takes effect with respect to the Executive Schedule pursuant to Section 5318 of title 5, United States Code, shall be applied to the rates of pay in effect after application of the increase provided under this section.

SEC. 3. (a) The Director of the Office of Management and Budget, in consultation with the Director of the Office of Personnel Management, may, from time to time, allocate and reallocate among the Departments and agencies of the Executive Branch critical position pay authority for not to exceed a government-wide total of 200 positions.

(b) The head of an agency who receives an allocation of critical position pay authority may exercise such authority for not to exceed the number of positions for which authority is received from the Director of the Office of Management and Budget as set forth in subsection (a) of this section.

(c) For purposes of this section, "critical position pay authority" means the authority of the head of an agency, notwithstanding any other law, including 2 U.S.C. 356, 5 U.S.C. 5308, 5 U.S.C. 5382, and 5 U.S.C. 5383(b), to fix the compensation for any position he determines to be a critical position at the time it is filled at an annual rate that does not exceed the rate for Level I of the Executive Schedule. Such authority must be reexercised when a position becomes vacant and is refilled based upon a redetermination by the agency head that the position is a critical position within the meaning of this section. Such authority may be reexercised only if the allocation made by the Director of the Office of Management and Budget required for such exercise pursuant to subsection (b) is reconfirmed by the Director of the Office of Management and Budget at the time of such reexercise.

(d) In determining whether a position is a critical position to which this section shall apply, the head of the agency shall consider:

(1) The extent to which the position requires scientific, technical, expert or professional qualifications; and

(2) the extent to which additional compensation is necessary to attract exceptionally qualified individuals.

(e) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the maximum annual rate of pay established by this section shall be adjusted by an amount, rounded to the nearest multiple of $100, equal to the percentage of such annual rate of pay which corresponds to the percentage of the adjustment in the rates of pay for the Executive Schedule under Section 5318 of title 5, United States Code, as amended by this Act.

SEC. 4. (a) For purposes of this section, "employee" shal. mean:

(1) Each senior executive as defined by section 3152(a) of title 5, United States Code;

(2) each member of the Senior Foreign Service; and

(3) career employees whose positions are set forth in the Executive Schedule.

(b) Every three years, each employee shall be subject to recertification as set forth in this section. Such recertification shall consist of the following:

(1) An employee shall be required to demonstrate to the employee's supervising authority that the employee's performance in the previous three year period has been outstanding or its equivalent, as defined by standards established for the employee's position.

(2) If the employee demonstrates such performance, the employee shall be recertified.

(3) If the employee fails to demonstrate such performance, the supervising authority shall take one of the following actions, depending on the circumstances:

(A) the employee's pay shall be reduced to the minimum rate of basic pay payable for GS-16 of the General Schedule; or

(B) the employee's level shall be reduced to such lesser level in the Senior Executive Service, the Senior Foreign Service, or the Executive Schedule as may be appropriate; or

(C) the employee, while retaining career tenure in the Federal service (for employees with such tenure), shall be removed and placed in a position in the General Schedule at GS-15, Step 10.

(c) The Director of the Office of Personnel Management shall promulgate such regulations as may be necessary to carry out this section. Such regulations shall, in the case of career employees, include appropriate rights to notice, hearing and appeal consistent with existing rights for similar personnel matters. Career employees shall have a right to appeal to the Merit Systems Protection Board from an adverse action under this section taken by the agency for any political or other proscribed purpose.

(d) This section shall take effect on January 1, 1990.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title

This section provides that the Act may be cited as the "Senior Executives Salary Act of 1989."

Sec. 2. Pay Raise for Senior Executives

This section would provide a 25 percent pay raise for all positions in the Executive Schedule, beginning in January 1990. As a result of this increase, members of the Senior Executive Service will also receive a pay raise beginning in January 1990. This will occur because Senior Executive pay rates are tied to pay rates for Level IV of the Executive Schedule.

Sec. 3. Critical Position Pay Authority

This section would establish a system for providing critical position pay authority. Under this authority, an agency head could determine to compensate an individual in such a position at an annual rate not to exceed the rate for Level I of the Executive Schedule.

Under subsection (a) of this section, the Director of the Office of Management and Budget, in consultation with the Director of the Office of Personnel Management, would be authorized to allocate critical position pay authority for not to exceed 200 positions. The Director would allocate these 200 positions among the agencies of the Executive Branch. The Director could change the allocations from time to time depending upon the circumstances with which he is presented.

Subsection (b) of this section would provide that an agency head may exercise critical position pay authority only for not to exceed the number of positions allocated to the agency by the Director of the Office of Management and Budget.

Subsection (c) of this section sets out the definition of "critical position pay authority." This section also provides that such authority must be reexercised when a position becomes vacant. The authority may be reexercised only if the Director of the Office of Management and Budget reconfirms the allocation of critical position pay authority for the position. This will ensure that the authority is exercised only on a controlled basis as necessary for recruitment for a particular position.

Subsection (d) sets out the factors the head of the agency is to consider in determining whether a position is a critical position to which the section shall apply. These factors are: (1) the extent to which the position requires scientific, technical, expert or professional qualifications, and (2) the extent to which additional compensation is necessary to attract exceptionally qualified individuals.

Subsection (e) of this section would index the annual maximum salary rate so that it would be increased to the same extent as the rates for the Executive Schedule under 5 U.S.C. Section 5318, as amended by the Act.

Sec. 4. Recertification of Senior Employees

This section sets out a process under which senior employees in the Executive Branch must be recertified every three years. Unless recertified, the employee would (1) lose the pay he or she receives above that provided to positions at GS–16 of the General Schedule, or (2) be reduced in level to a lesser level within the same pay system, or (3) be removed and placed in a position of the General Schedule at GS–15 step 10.

The employees subject to recertification are (1) members of the Senior Executive Service (both career and noncareer), (2) members of the Senior Foreign Service, and (3) career employees whose positions are set forth in the Executive Schedule.

Under subsection (b) of this section, each of these employees would be required to demonstrate to the employee's supervising authority that his or her performance in the previous three-year period had been outstanding or its equivalent as defined by standards established for the position. If the employee failed to make such a demonstration, his supervising authority would reduce his pay or position.

Subsection (c) of this section provides that the Director of OPM shall promulgate regulations to carry out the section. Such regulations must include, for career employees, rights to notice, hearing, and appeal consistent with existing rights for similar matters. Also, career employees are guaranteed the right to appeal to the Merit Systems Protection Board from an adverse action taken by the agency for political or other proscribed purposes.

Subsection (d) of this section provides that the recertification system established by this section shall take effect in January 1990.

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